

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

DONALD O. OVERMILLER,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 2:12-1634
)	Magistrate Judge Cynthia Reed Eddy
COMMONWEALTH OF P.A. D.O.C.; <i>ET</i>)	
<i>AL.</i> ,)	
Defendants.)	

MEMORANDUM ORDER¹

On November 7, 2012, Plaintiff, a prisoner presently incarcerated at the State Correctional Institution at Fayette, filed this action under the Civil Rights Act of 1871, 42 U.S.C. § 1983, alleging the denial of adequate medical care for treatment of cataracts. Presently pending is a “Motion to Hear Civil Case as Mercy Verdict Case.” (ECF No. 76.) In this motion, Plaintiff states:

I feel undue stress in excess of a normal human in this case. Suicidal tendencies have been present in the past 2 years plus. My mental state has been compromised and counseling will need to be taken. Please, take this into consideration with the Jury and the Judge. I do not want this harm to been felt by anyone else or hopelessness felt either. This is most undeniable a case where a mercy verdict is due. Pushing cases like mine under the rug will not be tolerated by God alone. In order to protect the sanetity [sic] of the insurance process, I feel the defendants lack the human dignity of a regular verdict. Please grant me this action against the defendants and have a heart when somebody needs medical attention over human greed. Thank you.

Id.

¹ The parties consented to jurisdiction by a United States Magistrate Judge. See ECF Nos. 6, 13, and 14. See also 28 U.S.C. § 636(c)(1).

The Federal Rules of Civil Procedure have no procedure known as a “mercy verdict case.” Nevertheless, a court must employ less stringent standards when considering pro se pleadings than when judging the work product of an attorney. *Haines v. Kerner*, 404 U.S. 519, 520 (1972). In a section 1983 action, the court must liberally construe the pro se litigant's pleadings and “apply the applicable law, irrespective of whether a pro se litigant has mentioned it by name.” *Higgins v. Beyer*, 293 F.3d 683, 688 (3d Cir. 2002) (quoting *Holley v. Dep't of Veteran Affairs*, 165 F.3d 244, 247–48 (3d Cir. 1999)). See also *Nami v. Fauver*, 82 F.3d 63, 65 (3d Cir. 1996).

It appears that Plaintiff is either seeking medical attention for depression related to stress that Plaintiff is experiencing in the litigation of this case. To the extent that he is seeking medical attention for depression, the Court has put SCI – Fayette on notice of that request. The instant motion could also be construed as a Motion for Summary Judgment.

On March 13, 2013, Plaintiff filed a “Motion for Preliminary Injunction and Summary Judgment.” (ECF No. 28). That motion was denied on March 27, 2013. (ECF No. 38). The Motion for Preliminary Injunction was denied on the merits and the Motion for Summary Judgment was denied, without prejudice as premature. *Id.* On April 11, 2013, the Court entered a case management order requiring that motions for summary judgment be filed on or before October, 21, 2013 and that replies had to be filed on or before November 11, 2013. (ECF No. 44). The Court also advised Plaintiff that his motion must comply with the Local Rules for the Western District of Pennsylvania and explained how Plaintiff should respond in a manner consistent with those rules. *Id.* Plaintiff’s “Motion to Hear Civil Case as Mercy Verdict Case” does not come close to conforming with the Court’s Order of April 11, 2013.

Finally, it is possible that Plaintiff is simply responding to Defendants' Reply Brief addressing Plaintiff's "Brief in Opposition" to Defendants' Motion for Summary Judgment." (ECF Nos. 73 and 75). The Court will consider Plaintiff's comments to the extent that they are relevant to the Court's ruling on Defendants' motion.

AND NOW, this 18th day of November, 2013;

IT IS HEREBY ORDERED THAT Plaintiff's "Motion to Hear Civil case a Mercy Verdict" (ECF No. 76) is hereby **denied**.

s/Cynthia Reed Eddy
Cynthia Reed Eddy
United States Magistrate Judge

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